

Amendments to Senate Bill No. 321
1st Reading Copy

Requested by Senator John Brueggeman

For the Senate Business, Labor, and Economic Affairs Committee

Prepared by Pat Murdo
February 16, 2007 (8:33am)

1. Page 1, line 9.
Strike: "61"
Insert: "56"
2. Page 1, line 12.
Strike: "61"
Insert: "56"
3. Page 1, line 26.
Strike: "61"
Insert: "56"
4. Page 2, line 20.
Strike: "61"
Insert: "56"
5. Page 2, line 21.
Strike: "61"
Insert: "56"
6. Page 3, line 2.
Strike: "61"
Insert: "56"
7. Page 3, line 17.
Strike: "61"
Insert: "56"
8. Page 3, line 30.
Strike: "61"
Insert: "56"
9. Page 4, line 2.
Strike: "61"
Insert: "56"
10. Page 4, line 3.
Strike: "61"
Insert: "56"

11. Page 4, line 5.
Strike: "61"
Insert: "56"
12. Page 4, line 7.
Strike: "61"
Insert: "56"
13. Page 4, line 8.
Strike: "61"
Insert: "56"
14. Page 5, line 15.
Strike: "61"
Insert: "56"
15. Page 5, line 17.
Strike: "a crime"
Insert: "any felony or a misdemeanor"
16. Page 5, line 30.
Strike: "53"
Insert: "50"
17. Page 6, line 16.
Strike: "61"
Insert: "56"
18. Page 7, line 19.
Strike: subsection (2) in its entirety
Renumber: subsequent subsections
19. Page 7, line 28.
Strike: "61"
Insert: "56"
20. Page 7, line 29.
Strike: "61"
Insert: "56"
21. Page 10, line 13.
Strike: "61"
Insert: "56"
22. Page 10, line 15.
Strike: "61"
Insert: "56"
23. Page 12, line 14.

Strike: "61"

Insert: "56"

24. Page 13, line 14.

Strike: "61"

Insert: "56"

25. Page 13, line 20 through page 14, line 1.

Strike: section 30 in its entirety

Insert: "NEW SECTION. Section 30. Investigations -- powers -- failure to comply or testify. (1) The department may investigate any matter, upon complaint or otherwise, if it appears that a person has engaged or offered to engage in any act or practice that is in violation of any provision of [sections 1 through 56] or any rule adopted or order issued by the department pursuant to [sections 1 through 56].

(2) The department may issues subpoenas to compel the attendance of any witnesses and the production of books, accounts, records, documents, and other evidence in any matter over which the department has jurisdiction, control, or supervision under [sections 1 through 56]. The department may administer an oath or affirmation to any person whose testimony is required.

(3) If a person refuses to obey a subpoena or to give testimony or produce evidence as required by the subpoena, a judge of the district court of Lewis and Clark County or the county in which the licensee's premises are located may, upon application and proof of the refusal, issue a subpoena or subpoena duces tecum for the witness to appear before the department to give testimony and produce evidence as may be required. The clerk of court shall issue the subpoena requiring the person to whom it is directed to appear at the time and place designated in the subpoena.

(4) If a person served with a court-ordered subpoena refuses to obey the subpoena or to give testimony or produce evidence as required by the subpoena, the department may proceed under the contempt provisions of Title 3, chapter 1, part 5.

(5) Failure to comply with the requirements of a court-ordered subpoena is punishable under 45-7-309."

Renumber: subsequent sections

26. Page 14, line 5.

Strike: "\$2,500"

Insert: "\$5,000"

27. Page 14, line 11.

Following: "establish"

Insert: "by rule"

28. Page 15, line 9.

Strike: "61"

Insert: "56"

29. Page 15, line 13.

Strike: "61"

Insert: "56"

30. Page 15, line 20.

Strike: "61"

Insert: "56"

31. Page 15, line 30.

Strike: "61"

Insert: "56"

32. Page 17, line 28.

Strike: "61"

Insert: "56"

33. Page 18, line 2 through line 7.

Strike: section 41 in its entirety

Insert: "NEW SECTION. Section 41. Injunction -- appointment of receiver. (1) If in the opinion of the department a person is using, has used, or is about to use any method, act, or practice that violates any provision of [sections 1 through 56] or any rule adopted or order issued by the department pursuant to [sections 1 through 56], the department, upon determining that proceeding would be in the public interest, may bring an action in the name of the state to restrain by temporary or permanent injunction or temporary restraining order the use of the unlawful method, act, or practice.

(2) The notice for an action pursuant to subsection (1) must state generally the relief sought and must be served at least 20 days before the hearing of the action in which the relief sought is a temporary or permanent injunction. The notice for a temporary restraining order is governed by 27-19-315.

(3) An action under this section may be brought in the district court of Lewis and Clark County.

(4) (a) A district court may issue a temporary or a permanent injunction or a temporary restraining order to restrain and prevent violations of [sections 1 through 56], and an injunction must be issued without bond to the department.

(b) If the department is successful in obtaining an injunction or a restraining order under this section, the department is entitled to reasonable attorney fees and costs.

(5) (a) In addition to all other means provided by law for the enforcement of a restraining order or an injunction, the district court of Lewis and Clark County may impound and appoint a receiver for the property and business of the defendant,

including books, accounts, records, and documents pertaining to the property or business, or as much of the property of business as the court considers reasonably necessary to prevent violations of [sections 1 through 56].

(b) The receiver, when appointed and qualified, has the powers and duties conferred by the court that may include custody, collection, administration, winding up of business and liquidation of the property and business."

Renumber: subsequent sections

34. Page 18, line 9 through line 12.

Strike: section 42 in its entirety

Insert: "NEW SECTION. Section 42. Cease and desist orders. If it appears to the department that a person is engaged in or is about to engage in any act or practice constituting a violation of any provision of [sections 1 through 56] or any rule adopted or order issued by the department pursuant to [sections 1 through 56], the department may issue an order directing the person to cease and desist from continuing the act or practice after reasonable notice and opportunity for hearing. The department may issue a temporary order pending the hearing that:

(a) remains in effect until 10 days after the hearings examiner issues proposed findings of fact and conclusions of law; or

(b) becomes final if the person to whom notice is addressed does not request a hearing within 10 days after receipt of the notice.

(2) A violation of an order issued pursuant to this section is subject to the penalty provisions of [sections 1 through 56]."

Renumber: subsequent sections

35. Page 18, line 14 through line 22.

Strike: section 43 in its entirety

Insert: "NEW SECTION. Section 43. Penalties -- license suspension and revocation -- restitution. (1) If, after providing a 10-day written notice that includes a statement of alleged violations and a notice of an opportunity for a hearing as provided in Title 2, chapter 4, the department finds that any licensee or unlicensed person or any officer, director, partner, trustee, employee, or representative of the licensee or unlicensed person has violated any of the provisions of [sections 1 through 56], has failed to comply with the rules or orders adopted by the department, has failed or refused to make required reports to the department, has furnished false information to the department, or has operated without a license, the department may:

(a) impose a civil penalty not to exceed \$1,000 for each violation or, in the case of a continuing violation, \$1,000 a day;

(b) issue an order revoking or suspending the right of the licensee or person, directly or through an officer, director, partner, trustee, employee, or representative, to do business in this state as a licensee or to engage in the business of a BIDCO; or

(c) issue an order requiring restitution to borrowers and reimbursement of the department's cost in bringing the administrative action.

(2) All notices, hearing schedules, and orders must be mailed to the licensee or person by certified mail to the address for which the license was issued or, in the case of an unlicensed business, to the last-known address of record.

(3) A revocation, suspension, or surrender of a license does not relieve the licensee from civil or criminal liability for acts committed prior to the revocation, suspension, or surrender of the license.

(4) (a) The department may reinstate any suspended or revoked license if there is not a fact or condition existing at the time of reinstatement that would have justified the department refusing to originally issue the license.

(b) If a license has been revoked for cause, an application may not be made for issuance of a new license or the reinstatement of a revoked license for a period of 6 months from the date of revocation.

(5) All civil penalties collected under this section must be deposited in the general fund."

Renumber: subsequent sections

36. Page 18, line 24 through line 30.

Strike: section 44 in its entirety

Renumber: subsequent sections

37. Page 19, line 5.

Following: "and"

Insert: "an opportunity for"

38. Page 19, line 6.

Strike: "61"

Insert: "56"

39. Page 20, line 18.

Strike: "61"

Insert: "56"

40. Page 20, line 19.

Strike: "45"

Insert: "44"

41. Page 20, line 22.

Following: "section"

Strike: "42" through "46"

Insert: "44(3) or 45"

42. Page 20, line 24 through line 25.

Strike: subsection (2) in its entirety

ReNUMBER: subsequent subsections

43. Page 20, line 30.

Strike: "61"

Insert: "56"

44. Page 21, line 1 through line 2.

Following: "section"

Strike: "42" on line 1 through "46" on line 2

Insert: "44(3) or 45"

45. Page 21, line 23.

Following: "and"

Insert: "an opportunity for"

46. Page 21, line 25.

Strike: "61"

Insert: "56"

47. Page 22, line 20.

Strike: "61"

Insert: "56"

48. Page 22, line 23.

Strike: "50"

Insert: "49"

49. Page 22, line 26 through line 27.

Following: "conservator" on line 26

Strike: "one of" on line 26 through "another" on line 27

Insert: "a"

50. Page 22, line 28.

Strike: "division" through "institutions"

Insert: "department"

51. Page 22, line 29 through line 30.

Strike: "division"

Insert: "department"

Strike: "Upon" on line 29 through the first "the" on line 30

Insert: "The"
Strike: "division" on line 30
Insert: "department"

52. Page 23, line 1.
Strike: "division" through "institutions"
Insert: "department"

53. Page 23, line 10 through page 24, line 9.
Strike: sections 52 through 54 in their entirety
Renumber: subsequent sections

54. Page 24, line 12.
Strike: "46" through "53"
Insert: "45, 49, or 50"

55. Page 24, line 16.
Strike: "61"
Insert: "56"

56. Page 24, line 17.
Strike: "61"
Insert: "56"

57. Page 24, line 30.
Strike: "61"
Insert: "56"

58. Page 25, line 2.
Strike: the first "61"
Insert: "56"
Strike: the second "61"
Insert: "56"

59. Page 25, line 4.
Strike: section 59 in its entirety
Renumber: subsequent sections

60. Page 25, line 6.
Strike: "61"
Insert: "56"

61. Page 25, line 11.
Strike: "61"
Insert: "56"

62. Page 25, line 19.

Strike: "61"
Insert: "56"

63. Page 25, line 21.

Strike: "61"
Insert: "56"

64. Page 25, line 22.

Strike: the first "35"
Insert: "32"
Strike: the second "35"
Insert: "32"
Strike: "61"
Insert: "56"

- END -